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# The Commonwealth of Massachusetts State Ethics Commission

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## THE CONFLICT OF INTEREST LAW and FORMER MUNICIPAL EMPLOYEES

Massachusetts G.L. c. 268A, the conflict of interest law, continues to apply to municipal employees, and in some cases their partners, even after the employees leave public service. Section 18 of the law deals with former municipal employees, and is designed to prevent municipal employees from making official judgments with an eye toward their personal future interests, or from profiting by their participation in particular decisions or controversies after they leave municipal service. Furthermore, the law keeps former employees from misusing their past friendships and associations within government to derive an unfair advantage for themselves or others. The law does not prohibit former employees from using expertise gained while employed by the municipality.

In certain instances the law also prohibits former employees from referring to their partners matters in which they themselves are prohibited from participating.

### Section 18(a) -- Restriction on Participation in Particular Matters

Section 18(a) prohibits former municipal employees from acting as agent or attorney for, or directly or indirectly receiving compensation from, anyone other than their city, town or municipal agency in connection with any particular matter<sup>1/</sup> that is of concern to the municipality and in which they participated<sup>2/</sup> as municipal employees. Thus, if you actually participated in a particular matter, you can never become involved in that same matter after you leave municipal service for anyone other than the city or town.

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<sup>1/</sup>"Particular matter," any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property. G.L. c. 268A, §1(k).

<sup>2/</sup>"Participate," participate in agency action or in a particular matter personally and substantially as a state, county or municipal employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise. G.L. c. 268A, §1(j).

Whether former municipal employees are affected by this section is determined by whether they participated, personally and substantially, as municipal employees in a particular matter such as a recommendation, decision, application or contract.<sup>3/</sup> Participation generally means any official action that entails more than ministerial acts such as the signing of an uncontested weekly payroll warrant. Thus, if your current employment involves matters in connection with the past particular matters in which you participated, it is activity perpetually prohibited under this section.

Example: A former municipal employee who made recommendations on and decisions pertaining to regulations enacted in her municipal agency is prohibited from working for a private organization on a challenge to the validity of those regulations.

Example: A former school department employee may not work for a contractor under the same contract in which he participated as a municipal employee.

Example: A former municipal attorney is prohibited from representing a private client in new litigation where the parties, facts, and controversy are identical to a lawsuit in which she participated as a municipal attorney.

#### **Section 18(b) -- One Year Restriction on Appearance Involving Matters over which Former Employees had Official Responsibility**

Section 18(b) focuses on matters over which former municipal employees exercised authority. Section 18(b) prohibits former municipal employees, for one year, from personally appearing before any municipal agency as an agent or attorney for anyone other than the city or town in connection with a particular matter that concerns the municipality and where the matter was under their official responsibility<sup>4/</sup> within two years prior to their termination from municipal service. In other words, this section operates prospectively as a one year ban on former municipal employees' personal appearances in connection with matters under their authority for the two years prior to their leaving municipal service.

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<sup>3/</sup> A special exemption is available for a former special municipal employee who receives compensation in connection with a contract with the municipality for which he or she worked. A particular certification is required in any such circumstance. An interested municipality or former special municipal employee should contact the Commission for further guidance.

<sup>4/</sup>"Official responsibility," the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and whether personal or through subordinates, to approve, disapprove or otherwise direct agency action. G.L. c. 268A, §1(i).

Under this section, municipal employees' official responsibilities would include particular matters that they delegated to a subordinate, as well as matters in which they abstained from participation. A personal appearance includes not only the physical appearance of former municipal employees before their former boards or agencies, but also includes telephone calls or correspondence to their former municipal agencies made on behalf of any private client.

Example: A selectman assigned a decision to her staff in January, 1987. She left her municipal position in September, 1988 to take a job with a private firm. She is prohibited through September, 1989 from making phone calls, writing or appearing on behalf of the firm or its clients in connection with the decision, because it was under her official responsibility within two years of her leaving public service. This restriction would also apply to other matters under her responsibility from September, 1986 through September, 1988.

Notwithstanding the provisions of §18(b), a former town counsel who received less than \$2000 per year for his or her municipal service shall be prohibited from personally appearing before any agency of the city or town only in particular matters that are of concern to the town and are matters in which the town counsel participated as a municipal employee.

#### **Section 18(c) -- Application of Certain Restrictions to the Partners of Former Municipal Employees**

Section 18(c) extends certain prohibitions of §18 to the partners of former municipal employees. This section prohibits a partner of former municipal employees, for one year after the termination of the worker's municipal employment, from knowingly engaging in any activity the former municipal employees are prohibited from doing under §18(a). In other words, if former municipal employees are prohibited from engaging in certain activity under §18(a), then their partners are similarly prohibited for one year from engaging in the same activity. This prohibition applies to the partners even where their participation predated the former employees' participation.

The term "partner" for the purposes of §18 has been defined by the Commission to include a member of a group of lawyers who by their conduct give the appearance of being partners. The term "partner" is not restricted to those who enter into formal partnership agreements; it may also apply to individuals who join formally or informally in a common business venture. In determining whether a partnership arrangement exists, the Commission looks to the substance of the individuals' relationship rather than the term used to describe that arrangement.

Example: A former town counsel joins a private law firm as a partner. The law firm partners may not, for one year, represent any private clients in connection with a lawsuit which the former town counsel attorney litigated as a municipal employee.

**Section 23 -- Former Municipal Employees Prohibited from Disclosing Confidential Information**

Section 23(c) prohibits former municipal employees from: (1) accepting employment or engaging in professional activity that will require them to disclose confidential information that they learned in their municipal jobs; and (2) improperly disclosing such non-public information to further their personal interests. Confidential or non-public information is material or data which is exempted from the definition of a public record under G.L. c. 4, §7.

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**Conclusion**

This summary is intended to provide you with guidance in your activities after you leave municipal employment. It is not intended to cover every situation. If you have specific questions concerning your activities under these provisions, please call the State Ethics Commission's Legal Division at (617) 727-0060.

**ISSUED: March 21, 1989**